

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 17, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP919-CR

Cir. Ct. No. 2014CF17

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

AMOS JOHNSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: LINDSEY CANONIE GRADY and JEFFREY A. KREMERS, Judges. *Affirmed.*

Before Brennan, P.J., Kessler and Brash, JJ

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Amos Johnson appeals a judgment convicting him of aggravated battery, as an act of domestic abuse, and possession of a firearm by a felon. He also appeals an order denying his motion for postconviction relief. Johnson challenges the circuit court’s decision denying his motion to suppress evidence obtained when the police searched the victim’s home without a warrant.¹ We affirm.

¶2 Evidence seized in a warrantless search of a person’s home is not admissible unless an exception to the warrant requirement applies. *See State v. Johnson*, 177 Wis. 2d 224, 231, 501 N.W.2d 876 (Ct. App. 1993). One exception to the warrant requirement is consent—when a person gives the police permission to enter his or her home to conduct a search. *Id.* at 233.

¶3 “Consent to search does not have to be given verbally.” *State v. Tomlinson*, 2002 WI 91, ¶37, 254 Wis. 2d 502, 648 N.W.2d 367. “Consent may be given in non-verbal form through gestures or conduct.” *Id.* Courts look at the person’s conduct and all of the surrounding circumstances to determine whether consent is implied from the person’s actions. *See State v. Douglas*, 123 Wis. 2d 13, 19-20, 365 N.W.2d 580 (1985). For example, the Wisconsin Supreme Court ruled that when a person contacted the police and sought their assistance, the police had the person’s implied consent to enter the home to investigate. *See Kelly v. State*, 75 Wis. 2d 303, 312-13, 249 N.W.2d 800 (1977). On appeal, we give deference to the circuit court’s factual findings but independently determine

¹ The State challenged Johnson’s standing to bring this argument. The circuit court did not address the standing issue because it concluded that, assuming Johnson had standing, the search did not violate the Fourth Amendment.

whether an exception to the warrant requirement applies based on the facts found by the circuit court. See *Tomlinson*, 254 Wis. 2d 502, ¶19.

¶4 The victim in this matter arrived at the police station seeking help. She had serious physical injuries. Both her eyes were swollen shut, she had a small laceration on her left eye, and there was fresh bruising on her face and one of her knees. The victim told a police officer that Johnson had punched her in the face and continued to beat her for about an hour earlier that morning. She said that the beating occurred at her home and that she had escaped when Johnson fell asleep on the sofa. The victim gave the police officer her address and also gave him Johnson's address. Medical personnel then arrived to take the victim to the hospital. The police officer told the victim that the police would go and look for Johnson, starting with her home. The police officer testified that he did not explicitly ask the victim if law enforcement had her permission to enter her home, but said that when he told the victim that the police would go and look for Johnson at her home, she did not object.

¶5 Based on these facts, we conclude that the police had the victim's implied consent to enter her home to look for Johnson. The victim sought out the assistance of the police, telling them that a crime occurred, giving them the name of her assailant and the location where the crime occurred, which was her home, and giving them her assailant's address. She sought the intervention of the police and gave them Johnson's last known location because she wanted the police to apprehend him. It naturally follows that the victim understood that the police would have to enter her home to look for Johnson, and she wanted them to do so. The victim's actions establish that she gave the police consent to enter her home.

¶6 Johnson addresses several other arguments on appeal. Because we have concluded that the victim gave implied consent to the police to enter and search her home, we need not address these arguments. *See Turner v. Taylor*, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (if a decision on one point disposes of the appeal, the appellate court need not decide the other issues raised).

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2015-16).

